

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DIANE VANDER HEYDEN,)	
)	No. CV-08-198-JPH
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION FOR SUMMARY JUDGMENT
)	
MICHAEL J. ASTRUE, Commissioner)	
of Social Security,)	
)	
Defendant.)	
)	
)	

BEFORE THE COURT are cross-motions for summary judgment noted for hearing without oral argument on January 30, 2009. (Ct. Rec. 12, 14). Attorney Maureen J. Rosette represents Plaintiff; Special Assistant United States Attorney David M. Blume represents the Commissioner of Social Security ("Commissioner"). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 17.) On January 13, 2009, plaintiff filed a reply. (Ct. Rec. 16.) After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** Defendant's Motion for Summary Judgment (Ct. Rec. 14) and **DENIES** Plaintiff's Motion for Summary Judgment (Ct. Rec. 12.)

JURISDICTION

Plaintiff protectively filed an application for disability insurance benefits (DIB) on June 10, 2005, alleging onset as of

1 June 1, 2001; at hearing, the onset date was amended to August 1,
2 2003. (Tr. 52-56, 58, 274.) The application was denied initially
3 and on reconsideration. (Tr. 37-38, 41-43.) Administrative Law
4 Judge (ALJ) Richard A. Say held a hearing on September 13, 2007.
5 (Tr. 271-298.) Plaintiff, represented by counsel, and vocational
6 expert Tom L. Moreland testified. On September 27, 2007, the ALJ
7 issued a decision finding that plaintiff was not disabled. (Tr.
8 28.) The Appeals Council denied a request for review on May 14,
9 2008. (Tr. 5-7.) Therefore, the ALJ's decision became the final
10 decision of the Commissioner, which is appealable to the district
11 court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action
12 for judicial review pursuant to 42 U.S.C. § 405(g) on June 24,
13 2008. (Ct. Rec. 1, 4.)

14 **STATEMENT OF FACTS**

15 The facts have been presented in the administrative hearing
16 transcript, the ALJ's decision, the briefs of both Plaintiff and
17 the Commissioner, and will only be summarized here.

18 Plaintiff was 46 years old on the amended onset date and 51
19 at the time of the decision. She has an associate's degree in
20 accounting and certification as a nurse's aide. (Tr. 64, 274,
21 286.) Plaintiff has worked as a certified nurse attendant,
22 cleaner/housekeeper, fast food worker, deli worker, and cashier.
23 (Tr. 291-292.) She alleges disability as of August 1, 2003, due
24 to arthritis in her knee, hypertension and epilepsy. (Tr. 58.)

25 **SEQUENTIAL EVALUATION PROCESS**

26 The Social Security Act (the "Act") defines "disability"
27 as the "inability to engage in any substantial gainful activity by
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1 reason of any medically determinable physical or mental impairment
2 which can be expected to result in death or which has lasted or
3 can be expected to last for a continuous period of not less than
4 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The
5 Act also provides that a Plaintiff shall be determined to be under
6 a disability only if any impairments are of such severity that a
7 plaintiff is not only unable to do previous work but cannot,
8 considering plaintiff's age, education and work experiences,
9 engage in any other substantial gainful work which exists in the
10 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).
11 Thus, the definition of disability consists of both medical and
12 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
13 (9th Cir. 2001).

14 The Commissioner has established a five-step sequential
15 evaluation process for determining whether a person is disabled.
16 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person
17 is engaged in substantial gainful activities. If so, benefits are
18 denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If
19 not, the decision maker proceeds to step two, which determines
20 whether plaintiff has a medically severe impairment or combination
21 of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),
22 416.920(a)(4)(ii).

23 If plaintiff does not have a severe impairment or combination
24 of impairments, the disability claim is denied. If the impairment
25 is severe, the evaluation proceeds to the third step, which
26 compares plaintiff's impairment with a number of listed
27 impairments acknowledged by the Commissioner to be so severe as to
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1 preclude substantial gainful activity. 20 C.F.R. §§
2 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P
3 App. 1. If the impairment meets or equals one of the listed
4 impairments, plaintiff is conclusively presumed to be disabled.
5 If the impairment is not one conclusively presumed to be
6 disabling, the evaluation proceeds to the fourth step, which
7 determines whether the impairment prevents plaintiff from
8 performing work which was performed in the past. If a plaintiff
9 is able to perform previous work, that Plaintiff is deemed not
10 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
11 At this step, plaintiff's residual functional capacity ("RFC")
12 assessment is considered. If plaintiff cannot perform this work,
13 the fifth and final step in the process determines whether
14 plaintiff is able to perform other work in the national economy in
15 view of plaintiff's residual functional capacity, age, education
16 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
17 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

18 The initial burden of proof rests upon plaintiff to establish
19 a *prima facie* case of entitlement to disability benefits.
20 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*
21 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
22 met once plaintiff establishes that a physical or mental
23 impairment prevents the performance of previous work. The burden
24 then shifts, at step five, to the Commissioner to show that (1)
25 plaintiff can perform other substantial gainful activity and (2) a
26 "significant number of jobs exist in the national economy" which
27 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th

1 Cir. 1984).

2 **STANDARD OF REVIEW**

3 Congress has provided a limited scope of judicial review of a
4 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold
5 the Commissioner's decision, made through an ALJ, when the
6 determination is not based on legal error and is supported by
7 substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995
8 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.
9 1999). "The [Commissioner's] determination that a plaintiff is
10 not disabled will be upheld if the findings of fact are supported
11 by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572
12 (9th Cir. 1983) (*citing* 42 U.S.C. § 405(g)). Substantial evidence
13 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d
14 1112, 1119 n. 10 (9th Cir. 1975), but less than a preponderance.
15 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);
16 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d
17 573, 576 (9th Cir. 1988). Substantial evidence "means such
18 evidence as a reasonable mind might accept as adequate to support
19 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
20 (citations omitted). "[S]uch inferences and conclusions as the
21 [Commissioner] may reasonably draw from the evidence" will also be
22 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965).
23 On review, the Court considers the record as a whole, not just the
24 evidence supporting the decision of the Commissioner. *Weetman v.*
25 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989) (*quoting Kornock v.*
26 *Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

27 It is the role of the trier of fact, not this Court, to
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1 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
2 evidence supports more than one rational interpretation, the Court
3 may not substitute its judgment for that of the Commissioner.
4 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
5 (9th Cir. 1984). Nevertheless, a decision supported by
6 substantial evidence will still be set aside if the proper legal
7 standards were not applied in weighing the evidence and making the
8 decision. *Browner v. Secretary of Health and Human Services*, 839
9 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial
10 evidence to support the administrative findings, or if there is
11 conflicting evidence that will support a finding of either
12 disability or nondisability, the finding of the Commissioner is
13 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir.
14 1987).

15 **ALJ'S FINDINGS**

16 At the outset the ALJ found plaintiff was last insured
17 through December 31, 2007, for purposes of her DIB claim. (Tr.
18 18, 20.) The ALJ found at step one that plaintiff has not engaged
19 in substantial gainful activity since onset. (Tr. 20.) At steps
20 two and three, the ALJ found that plaintiff suffers from
21 degenerative joint disease of the right knee, seizures, and
22 obesity, impairments that are severe but do not meet or medically
23 equal the requirements of the Listings. (Tr. 20, 25.) After
24 finding plaintiff not fully credible, the ALJ determined
25 plaintiff has the RFC to perform a range of light work. (Tr. 25,
26 27.) At step four, the ALJ relied on the vocational expert's
27 testimony and found a person with plaintiff's impairments and
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1 background could perform her past relevant work as a
2 cleaner/housekeeper, deli worker and cashier II. (Tr. 28.)
3 Because the ALJ found plaintiff is able to perform past relevant
4 work, he was not required to proceed to step five. The ALJ found
5 plaintiff not disabled. (*Id.*)

6 ISSUES

7 Plaintiff contends that the Commissioner erred as a matter of
8 law when he weighed the medical evidence and assessed plaintiff's
9 credibility. (Ct. Rec. 13 at 11-13 and 14-15, respectively.) The
10 Commissioner responds that the ALJ's assessment of the medical
11 evidence and plaintiff's credibility is without error, and asks
12 that the decision be affirmed. (Ct. Rec. 15 at 6.)

13 DISCUSSION

14 A. Weighing evidence of psychological impairment

15 In social security proceedings, the claimant must prove the
16 existence of a physical or mental impairment by providing medical
17 evidence consisting of signs, symptoms, and laboratory findings;
18 the claimant's own statement of symptoms alone will not suffice.
19 20 C.F.R. § 416.908. The effects of all symptoms must be
20 evaluated on the basis of a medically determinable impairment
21 which can be shown to be the cause of the symptoms. 20 C.F.R. §
22 416.929. Once medical evidence of an underlying impairment has
23 been shown, medical findings are not required to support the
24 alleged severity of symptoms. *Bunnell v. Sullivan*, 947, F. 2d
25 341, 345 (9th Cr. 1991).

26 A treating physician's opinion is given special weight
27 because of familiarity with the claimant and the claimant's
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1 physical condition. *Fair v. Bowen*, 885 F. 2d 597, 604-05 (9th
2 Cir. 1989). However, the treating physician's opinion is not
3 "necessarily conclusive as to either a physical condition or the
4 ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747,
5 751 (9th Cir. 1989) (citations omitted). More weight is given to
6 a treating physician than an examining physician. *Lester v.*
7 *Cater*, 81 F.3d 821, 830 (9th Cir. 1996). Correspondingly, more
8 weight is given to the opinions of treating and examining
9 physicians than to nonexamining physicians. *Benecke v. Barnhart*,
10 379 F. 3d 587, 592 (9th Cir. 2004). If the treating or examining
11 physician's opinions are not contradicted, they can be rejected
12 only with clear and convincing reasons. *Lester*, 81 F. 3d at 830.
13 If contradicted, the ALJ may reject an opinion if he states
14 specific, legitimate reasons that are supported by substantial
15 evidence. See *Flaten v. Secretary of Health and Human Serv.*, 44
16 F. 3d 1435, 1463 (9th Cir. 1995).

17 In addition to the testimony of a nonexamining medical
18 advisor, the ALJ must have other evidence to support a decision to
19 reject the opinion of a treating physician, such as laboratory
20 test results, contrary reports from examining physicians, and
21 testimony from the claimant that was inconsistent with the
22 treating physician's opinion. *Magallanes v. Bowen*, 881 F.2d 747,
23 751-52 (9th Cir. 1989); *Andrews v. Shalala*, 53 F.3d 1042-43 (9th
24 Cir. 1995).

25 An impairment or combination of impairments may be found "not
26 severe *only if* the evidence establishes a slight abnormality that
27 has no more than a minimal effect on an individual's ability to
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1 work." *Webb. Barnhart*, 433 F. 3d 683, 686-687 (9th Cir.
2 2005)(citing *Smolen v. Chater*, 80 F. 3d 1273, 1290 (9th Cir.
3 1996); see *Yuckert v. Bowen*, 841 F. 2d 303, 306 (9th Cir. 1988).
4 If an adjudicator is unable to determine clearly the effect of an
5 impairment or combination of impairments on the individual's
6 ability to do basic work activities, the sequential evaluation
7 should not end with the not severe evaluation step. S.S.R. No.
8 85-28 (1985). Step two, then, is "a de minimus screening device
9 [used] to dispose of groundless claims," *Smolen*, 80 F. 3d at 1290,
10 and an ALJ may find that a claimant lacks a medically severe
11 impairment or combination of impairments only when his conclusion
12 is "clearly established by medical evidence." S.S.R. 85-28. The
13 question on review is whether the ALJ had substantial evidence to
14 find that the medical evidence clearly established that the
15 claimant did not have a medically severe impairment or combination
16 of impairments. *Webb*, 433 F. 3d at 687; see also *Yuckert*, 841 F.
17 2d at 306.

18 Plaintiff contends that the ALJ erred by rejecting the
19 opinion of examining psychologist John Arnold, Ph.D., and by
20 finding at step two she suffers from no severe mental impairment.
21 (Ct. Rec. 13 at 11-14). The Commissioner responds that the ALJ
22 properly weighed the medical evidence and his finding at step two
23 should be affirmed. (Ct. Rec. 15 at 6).

24 When Dr. Arnold assessed plaintiff on August 30, 2007, she
25 described experiencing seizures since age twelve and currently had
26 petit mal seizures twice a month. They last several minutes and
27 do not cause her to lose consciousness. She takes anticonvulsants
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1 and has had memory problems for two years. (Tr. 254.) Dr. Arnold
2 notes plaintiff reported being depressed and began treatment with
3 celexa five months earlier. Dr. Arnold reviewed a December 1,
4 2004, report by John McRae, Ph.D., noting the only test Dr. McRae
5 gave plaintiff was the Beck Depression Inventory. Plaintiff's
6 results were subclinical for depression. (Tr. 255.) Dr. Arnold
7 notes neurologist John Wurst, M.D., diagnosed juvenile myoclonic
8 epilepsy on December 5, 2006. (Id., referring to Tr. 222.) Dr.
9 Arnold notes plaintiff has a two year college degree and earned a
10 3.2 GPA. (Id.)

11 Dr. Arnold's testing revealed average memory and intellectual
12 functioning. (Tr. 256.) He diagnosed dysthymic disorder, rule out
13 major depression, schizoid personality disorder, and seizure
14 disorder. He assessed a current GAF¹ of 62 with the past year's
15 highest of 65. (Id.)

16 Dr. Arnold assessed plaintiff as moderately limited in the
17 ability to: (1) maintain attention and concentration for extended
18 periods; (2) work in coordination with or proximity to others
19 without being distracted by them; (3) accept instructions from and
20 respond appropriately to criticism from supervisors; and (4)
21 travel to unfamiliar places or use public transport. (Tr. 263-
22 264.) He also opined plaintiff was limited with respect to
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24 ¹A GAF (Global Assessment of Functioning) of 61-70
25 indicates some mild symptoms (e.g., depressed mood and mild
26 insomnia) or some difficulty in social, occupational, or
27 school functioning (e.g., occasional truancy, or theft within
28 the household), but generally functioning pretty well, has
some meaningful interpersonal relationships. DIAGNOSTIC AND
STATISTICAL MANUAL OF MENTAL DISORDERS FOURTH EDITION(DSM-IV),
at p. 32.

1 "adaptability to situations involving the interpretation of
2 feelings, ideas or facts in terms of personal viewpoint";
3 "adaptability to influencing people in their opinions, attitudes,
4 or judgments about ideas or things"; dealing with people beyond
5 giving and receiving instructions; and performing under stress
6 when confronted with emergency, critical, unusual, or dangerous
7 situations. (Tr. 265.)

8 The ALJ found "recently diagnosed mental disorders [such as
9 Dr. Arnold's 2007 assessment] are imposing no more than a minimal
10 or *de minimus* limitation on her ability to do work-related
11 activities, and therefore, are not a severe impairment." (Tr.
12 25.) In reaching this conclusion, the ALJ considered the opinions
13 of Dr. Arnold, neurologist Dr. Wurst, and examining psychologist
14 Dr. McRae. (Tr. 22-25.)

15 The ALJ notes Dr. McRae evaluated plaintiff in December of
16 2004 after she was referred by the Division of Vocational
17 Rehabilitation. Dr. McRae states plaintiff cared for her husband
18 who suffered from dementia. She sought in-home part-time work.
19 (Tr. 22, referring to Exhibit 12F.) The ALJ considered Dr.
20 McRae's report that plaintiff felt a little down, but not to the
21 point of feeling depressed, and denied feeling any anxiety. ALJ
22 Say notes that at Dr. McRae's exam:

23 [plaintiff] reported psychiatric hospitalizations in 1977
24 due to an overdose related to discovery of abuse of her
25 daughter, and again in 1981 after the birth of a child
26 combined with being over medicated with anti-seizure
27 medication. She reported a brief period, in the late
28 1980s, when she experienced obsessive-compulsive disorder
symptoms. She tried Prozac in the 1990s, but stopped after
a few months. She believed her symptoms of depression
were related to being over medicated with anti-seizure
medication as well.

1 . . . She complained of problems with her right knee and
2 leg, and high blood pressure. She was on medication for
3 seizures, and had been seizure free as long as ten years
4 at a time. She reported she stayed home nearly all the
5 time caring for her husband, who had been unable to work
6 for three years. She enjoyed quilting and cards. She
7 played some pool with her husband. She cleaned and did
8 chores, and baked bread weekly.

9 . . . On mental exam, she was alert and cooperative, logical
10 and progressive in her thinking. On Beck Inventory III², she
11 scored in the non-depressed range.
12 On the Beck Anxiety Index, she scored in a non-anxious
13 range. She specifically denied any current obsessive-
14 compulsive ideas or behavior. Dr. McRae diagnosed history
15 of depressive disorder, not otherwise specified in
16 remission greater than 20 years, history of obsessive-
17 compulsive complaints, in remission 17 years, and global
18 assessment of functioning of 65. Dr. McRae reported she
19 had no manifest symptoms of depression or anxiety and had
20 no current need for treatment.

21 (Tr. 22, referring to Exhibit 12F.)

22 The ALJ notes both Dr. Arnold in 2007 and Dr. McRae in
23 2004 indicate a history of psychological hospitalizations many
24 years ago, but no current cognitive or memory problems. (Tr. 25,
25 comparing Exhibit 12F with Exhibit 13F.) The ALJ points out that
26 Dr. Arnold's testing indicated average memory and adequate
27 concentration skills. ALJ Say notes that in December of 2006, Dr.
28 Wurst indicated plaintiff had some memory and other cognitive
symptoms, which were thought to be related to menopause or
possibly medication. (Tr. 25, referring to Exhibit 9F.)

The ALJ points out Dr. McRae assessed no depression at the
time of his evaluation. The ALJ notes plaintiff told Dr. Arnold
she was prescribed antidepressant medication only a few months
earlier [than August 2007]. This is significant given that

²The record indicates Dr. McRae administered the Beck
Depression Inventory II (see Tr. 252) but any resultant error
appears harmless.

1 plaintiff's last insured date is December 31, 2007. The ALJ
2 observes there is no indication in the record of ongoing
3 depression or other mental impairment between Dr. McRae's
4 evaluation [in 2004] and Dr. Arnold's [in 2007]. The ALJ sees
5 that while both Drs. McRae and Arnold assessed GAFs in the 60s,
6 indicating mild symptoms, Dr. Arnold assigned several moderate
7 limitations. The ALJ gave little weight to Dr. Arnold's assessed
8 limitations because they are inconsistent with his own report at
9 13F [including assessed GAFs of 62 and 65], with Dr. McRae's
10 report [indicating no current need for treatment], and with the
11 longitudinal record [indicating no ongoing mental health treatment
12 or regularly prescribed psychotropic medication]. (Tr. 25.)

13 To aid in weighing the evidence, the ALJ evaluated
14 plaintiff's credibility and found her less than fully credible.
15 (Tr. 27.) Credibility determinations bear on evaluations of
16 medical evidence when an ALJ is presented with conflicting medical
17 opinions or inconsistency between a claimant's subjective
18 complaints and diagnosed condition. See *Webb v. Barnhart*, 433 F.
19 3d 683, 688 (9th Cir. 2005).

20 It is the province of the ALJ to make credibility
21 determinations. *Andrews v. Shalala*, 53 F. 3d 1035, 1039 (9th Cir.
22 1995). However, the ALJ's findings must be supported by specific
23 cogent reasons. *Rashad v. Sullivan*, 903 F. 2d 1229, 1231 (9th
24 Cir. 1990). Once the claimant produces medical evidence of an
25 underlying medical impairment, the ALJ may not discredit testimony
26 as to the severity of an impairment because it is unsupported by
27 medical evidence. *Reddick v. Chater*, 157 F. 3d 715, 722 (9th Cir.
28 1998). Absent affirmative evidence of malingering, the ALJ's

1 reasons for rejecting the claimant's testimony must be "clear and
2 convincing." *Lester v. Chater*, 81 F. 3d 821, 834 (9th Cir. 1995).
3 "General findings are insufficient: rather the ALJ must identify
4 what testimony not credible and what evidence undermines the
5 claimant's complaints." *Lester*, 81 F. 3d at 834; *Dodrill v.*
6 *Shalala*, 12 F. 3d 915, 918 (9th Cir. 1993).

7 The ALJ relied on several factors when he assessed
8 credibility. Plaintiff inconsistently stated she stopped working
9 due to disability, and stopped work to move to Washington to care
10 for her ill husband. (Tr. 27.) Plaintiff engages in a wide range
11 of daily activities, including caring for her husband, cleaning,
12 laundry and cooking, which are not consistent with the degree of
13 claimed impairment. (Tr. 27.) Complaints of problems with her
14 knees and with memory are not supported by medical evidence. (Tr.
15 27.) The ALJ notes that no treating physician has opined
16 plaintiff is unable to work. (Tr. 28.)

17 The record does not reveal evidence of severe mental
18 impairment from the date of onset (August 1, 2003) until December
19 31, 2007, the date last insured, contrary to plaintiff's
20 assertion. On December 4, 2003, Dr. McRae assessed a past year's
21 highest GAF of 70, indicating only mild symptoms. (Tr. 253.) In
22 July of 2005, plaintiff described her daily activities: caring for
23 personal needs and for her husband who suffers from dementia,
24 laundry, cooking, shopping and cleaning. She reported walking the
25 dog, keeping a journal, watching movies and television, and
26 visiting friends. (Tr. 88-92.)

27 Interestingly, plaintiff has indicated many anti-convulsants,
28 including dilantin, left her "depressed and weepy." (Tr. 78.)

1 Plaintiff indicated she took dilantin from 1968 until 1999. (Tr.
2 208.)

3 The ALJ's reasons for finding plaintiff less than fully
4 credible are clear, convincing, and fully supported by the record.
5 See *Thomas v. Barnhart*, 278 F. 3d 947, 958-959 (9th Cir.
6 2002)(proper factors include inconsistencies in plaintiff's
7 statements, inconsistencies between statements and conduct, and
8 extent of daily activities). Noncompliance with medical care or
9 unexplained or inadequately explained reasons for failing to seek
10 medical treatment also cast doubt on a claimant's subjective
11 complaints. 20 C.F.R. §§ 404.1530, 426.930; *Fair v. Bowen*, 885 F.
12 2d 597, 603 (9th Cir. 1989). The ALJ gave clear and convincing
13 reasons for finding plaintiff less than fully credible.

14 The ALJ's reasons for rejecting Dr. Arnold's assessed
15 moderate limitations are specific, legitimate, and supported by
16 substantial evidence. And, the ALJ's finding at step two that
17 plaintiff does not suffer from a severe mental impairment (one
18 causing more than a minimal effect on her ability to work) is
19 supported by the record, especially given the lack of regularly
20 prescribed psychotropic medication or therapy.

21 **B. Weighing evidence of physical impairment**

22 Plaintiff argues that the ALJ erred in determining her RFC by
23 failing to properly reject her testimony that she is physically
24 limited, in part because she experiences petit seizures. (Ct.
25 Rec. 13 at 15.) As indicated, the ALJ's credibility determination
26 is supported by clear and convincing evidence.

27 The ALJ observes that no treating physician has opined
28 plaintiff in unable to work. (Tr. 28.) He notes that plaintiff

1 told Dr. Wurth in January of 2006 that she felt she had minor
2 seizures or pre-seizure feelings (breakthrough seizure symptoms)
3 which seemed to be associated with fragmented sleep the night
4 before relative to her husband's illness. (Tr. 27, referring to
5 Tr. 210.) Plaintiff's daily activities, including caring for
6 another person, significantly undercut the claimed degree of
7 impairment and limitation. ALJ Say notes that in November of
8 2006, Dr. Wurst reported a ten month gap in plaintiff's treatment
9 for seizure disorder. (Tr. 23.)

10 The ALJ is responsible for reviewing the evidence and
11 resolving conflicts or ambiguities in testimony. *Magallanes v.*
12 *Bowen*, 881 F. 2d 747, 751 (9th Cir. 1989). It is the role of the
13 trier of fact, not this court, to resolve conflicts in evidence.
14 *Richardson*, 402 U.S. at 400. The court has a limited role in
15 determining whether the ALJ's decision is supported by substantial
16 evidence and may not substitute its own judgment for that of the
17 ALJ, even if it might justifiably have reached a different result
18 upon de novo review. 42 U.S.C. § 405 (g).

19 The ALJ provided clear and convincing reasons for finding
20 plaintiff's allegations not fully credible. The ALJ's
21 assessment of the medical and other evidence is supported by
22 the record and free of legal error.

23 CONCLUSION

24 Having reviewed the record and the ALJ's conclusions, this
25 court finds that the ALJ's decision is free of legal error and
26 supported by substantial evidence..

27 IT IS ORDERED:

28 1. Defendant's Motion for Summary Judgment (**Ct. Rec. 14**) is

1 **GRANTED.**

2 2. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 12**) is

3 **DENIED.**

4 The District Court Executive is directed to file this Order,
5 provide copies to counsel for Plaintiff and Defendant, enter
6 judgment in favor of Defendant, and **CLOSE** this file.

7 DATED this 30th day of January, 2009.

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9
10 s/ James P. Hutton

11 JAMES P. HUTTON
12 UNITED STATES MAGISTRATE JUDGE
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